



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM DECISION**

### Dispute Codes

OPR – DR   OPUM – DR

### Introduction

This application has been made via the Direct Request Proceeding; an ex parte process pursuant to section 55(4) of the *Residential Tenancy Act* (the *Act*.)

The landlord has applied requesting an order of possession.

The landlord submitted a proof of service document which declares that on September 28, 2019 the landlord served the tenant notice of the direct request proceeding by registered mail sent to the rental unit address. The landlord provided a copy of a Canada Post receipt and tracking number as confirmation of service to the tenant.

Based on the written submissions of the landlord I find that the tenant has been served the proceeding documents in accordance with section 89(2)(c) of the *Act*.

In accordance with section 90(a) of the *Act* I find that the tenant is deemed served with notice of the direct request proceeding effective the fifth day after mailing; October 03, 2019.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession based on unpaid rent?

### Background and Evidence

The landlord submitted a number of documents that are not directly relevant to the matter of unpaid rent. I have considered the following documents:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on January 30, 2017, indicating a monthly rent of \$1,100.00, due on the first day of each month;
- A copy of a Notice of Rent Increase in the approved form indicating rent was increased effective December 01, 2018 to monthly rent of \$1,144.00;
- A letter to the tenant dated January 30, 2019, that indicates the tenant had been given a notice of rent increase in a sum exceeding that allowable. The landlord informs the tenant rent will be increase by \$27.50 not \$49.00. Rent effective April 1, 2019 will be \$1,027.50. A copy of the Notice of Rent Increase is not supplied;

- A copy of a 10 day Notice to end tenancy for unpaid rent or utilities (the Notice) issued on September 05, 2019, with an effective date of September 15, 2019. The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,127.50 within five (5) days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental unit by the date set out in the Notice unless the tenant filed an application for dispute resolution within five (5) days;
- A copy of a proof of service form signed by one of the landlords who witnessed the other serve the Notice to the tenant by placing the Notice in the mail box or slot on September 05, 2019 at 5:30 p.m.; and
- A direct request worksheet indicating that all rent due was paid in two installments by September 14, 2019. The worksheet indicates rent owed is \$1,127.50.

### Analysis

Based on the evidence before me I find that the Notice has been issued for rent owed in the sum of \$1,127.50. There is no evidence before me supporting a rent increase to the sum of \$1,127.50. The letter issued by the landlord on January 30, 2019 mentions rent in the sum of \$1,027.50; a copy of a notice of rent increase in the approved form is not provided.

The Direct Request Proceeding is an ex parte process where the tenant is not provided with an opportunity to attend a hearing or make a rebuttal to the claim. The onus is on the landlord applicant to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may require further clarification.

Documentation that clearly establishes rent owed since the notice of rent increase issued effective December 01, 2018 is not apparent.

Therefore, I order that the Direct Request Proceeding be convened to a participatory hearing, in accordance with section 74 of the *Act*. A participatory hearing, conducted by an arbitrator appointed under the *Act*, is required in order to determine all factors required in support of the application; such as the correct amount of rent owed since the rent increase that became effective December 01, 2018 and the weight of the Notice.

### **READ THE FOLLOWING CAREFULLY:**

**Notices of the time and date of the hearing are included with this direct request proceeding decision for the LANDLORD to serve to the TENANT within three (3) days of receipt of this direct request proceeding decision.**

At the same time as the Notice of Hearing is served the **LANDLORD** must serve a copy of this direct request decision to the **TENANT**.

**Each party** must serve the other and the Residential Tenancy Branch with any evidence that they intend to rely upon at the hearing. At the hearing both parties will be required to provide proof of service of documents as ordered.

Fact sheets are available at <http://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb114.pdf> that explain evidence and service requirements.

For more information see our website at: [www.gov.bc.ca/landlordtenant](http://www.gov.bc.ca/landlordtenant)

If either party has any questions they may contact an Information Officer with the Residential Tenancy Branch at:

**Lower Mainland:** 604-660-1020

**Victoria:** 250-387-1602

**Elsewhere in BC:** 1-800-665-8779

Failure to attend the hearing at the scheduled time and to meet deadlines for the submission and service of evidence may result in a decision being made on the basis of information before the arbitrator and the testimony of the party in attendance at the hearing.

#### Conclusion

The application is adjourned to a participatory hearing.

This interim decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 09, 2019

---

Residential Tenancy Branch